

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

DANIEL PELLICANO and)	
JUDY PELLICANO,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 3:07CV743-HEH
)	
CULTURAL CARE AU PAIR,)	
)	
Defendant.)	

FINAL ORDER
(Granting Defendant's Motion to Dismiss)

THIS MATTER is before the Court on Defendant Cultural Care's Motion to Dismiss pursuant to Rules 12(b)(1), (2), and (3) of the Federal Rules of Civil Procedure or, in the alternative, to transfer venue pursuant to 28 U.S.C. § 1404, filed on December 5, 2007. Plaintiffs have not responded to Defendant's motion.


The contract underlying this action includes a forum-selection clause, whereby the parties agreed to submit any claim arising from that contract "to the exclusive jurisdiction and venue of the courts of the Commonwealth of Massachusetts and of the United States District Court for the District of Massachusetts." (Memo. in Supp. of Def.'s Mot. to Dismiss, pp. 1-2.) In the Fourth Circuit, "a motion to dismiss based on a forum-selection clause should be properly treated under Rule 12(b)(3) as a motion to dismiss on the basis of improper venue." *Sucampo Pharm., Inc. v. Astellas Pharma, Inc.*, 471 F.3d 544, 550 (4th Cir. 2006). Forum-selection clauses are considered to be "prima facie valid and

should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10, 92 S.Ct. 1907, 1913 (1972). As Plaintiffs have neither responded to Defendant's motion nor offered any opposition whatsoever to Defendant's assertion of the forum-selection clause, this Court sees no reason to find enforcement "unreasonable."

Therefore, it appearing appropriate to do so, the Court HEREBY GRANTS Defendant's Motion to Dismiss pursuant to Rule 12(b)(3).

It is so ORDERED.

The Clerk is hereby directed to send a copy of this Order to all counsel of record.



/s/

Henry E. Hudson
United States District Judge

Date: Jan 7, 2008
Richmond, VA